

**RULES
OF
TENNESSEE REGULATORY AUTHORITY
DIVISION OF PRACTICE AND PROCEDURE**

**CHAPTER 1220-1-3
ALTERNATIVE DISPUTE RESOLUTION**

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1220-1-3-.01 DEFINITIONS.

For the purposes of this chapter, the following terms shall have the following meanings:

- (1) “Mediation” is an informal process in which a neutral person, referred to as a mediator, conducts discussions among the parties designed to enable them to reach a mutually acceptable agreement on all or any part of the issues in dispute.
- (2) “Administrative settlement conference” is a mediation conducted by a Hearing Officer who will not otherwise be involved in the proceeding.
- (3) “Non-binding arbitration” is a process, other than arbitrations held pursuant to §252 of the Federal Telecommunications Act, in which a neutral person or a panel, called an arbitrator or an arbitration panel, considers the facts and arguments presented by the parties and makes a decision which is non-binding.
- (4) “Summary proceeding” is a proceeding wherein the parties present their evidence, if any, solely by affidavits and their arguments solely by written briefs, unless the Authority, either on motion of a party or on its own motion, determines that oral argument would assist in the expeditious disposition of the matters at issue.
- (5) “Administrative dispute resolution procedure” is a mediation, administrative settlement conference, non-binding arbitration or summary proceeding as provided in these rules.

Authority: *Tennessee Code Annotated, §§ 4-5-105, 65-2-108 and 65-2-102.* **Administrative History:** *Original rule filed June 30, 2000; effective September 13, 2000.*

1220-1-3-.02 APPLICATION.

- (1) The Authority may use an administrative dispute resolution procedure for the resolution of all or part of the issues in any contested case provided all parties agree to such procedure.
- (2) The limitations on the uses of administrative dispute resolution procedures do not apply to settlements of issues pursuant to a pre-hearing conference or during the course of the hearing of a contested case. The procedures utilized in this chapter supplement, rather than limit, other available dispute resolution methods.
- (3) Even though the parties agree to the use of administrative dispute resolution procedures, the Authority may refuse to follow such procedures and proceed under contested case procedures if the Authority determines that such use would be contrary to the public interest or the statutory policies governing the Authority. In making that determination, the Authority shall consider whether:

(Rule 1220-1-3-.02, continued)

- (a) a definitive or authoritative resolution of the matter is required for precedential value, and such a proceeding is not likely to be accepted generally as an authoritative precedent;
- (b) the matter involves, or may bear upon, significant issues of policy that require additional procedures before a final resolution may be made, and such a proceeding would not likely serve to develop a recommended policy for the Authority;
- (c) the maintenance of established policies is of special importance, so that variations among individual decisions are not increased, and such a proceeding would not likely reach consistent results among individual decisions;
- (d) the matter significantly affects persons or organizations who are not parties to the proceeding;
- (e) a full public record of the proceeding is important, and an administrative dispute resolution procedure cannot provide such a record; and
- (f) the Authority shall maintain continuing jurisdiction over the matter with authority to alter the disposition of the matter in the light of changed circumstances, and an administrative dispute resolution procedure would interfere with the Authority's fulfillment of such requirement.

Authority: *Tennessee Code Annotated, §§ 4-5-105, 65-2-108 and 65-2-102. Administrative History:* Original rule filed June 30, 2000; effective September 13, 2000.

1220-1-3-.03 INITIATION.

- (1) Upon motion of any party, or on its own motion, the Authority may serve all parties to the contested case with a notice of proposed administrative dispute resolution procedure. Such notice shall state the type of proceeding proposed and give the parties a stated time within which to indicate their agreement or disagreement with the use of the proposed administrative dispute resolution procedure.
- (2) All parties to a contested case may submit a proposed agreed order for the use of an administrative dispute resolution procedure; in such event, no notice of proposed administrative dispute resolution procedure shall be served. Any such proposed agreed order shall state the procedure to be followed.
- (3) If all parties agree to the use of the proposed administrative dispute resolution procedure and the Authority determines that such use would not be contrary to the public interest or to the statutory policies governing the Authority, the Authority shall issue an order initiating the administrative dispute resolution procedure and specifying the procedure and the schedule to be followed.

Authority: *Tennessee Code Annotated, §§ 4-5-105, 65-2-108 and 65-2-102. Administrative History:* Original rule filed June 30, 2000; effective September 13, 2000.

1220-1-3-.04 INADMISSIBILITY OF EVIDENCE.

Evidence of conduct or statements made in the course of administrative dispute resolution proceedings under these rules shall be inadmissible in proceedings before the Authority to the same extent that conduct or statements are inadmissible in court under Rule 408 of the Tennessee Rules of Evidence.

Authority: *Tennessee Code Annotated, §§ 4-5-105, 65-2-108 and 65-2-102. Administrative History:* Original rule filed June 30, 2000; effective September 13, 2000.

1220-1-3-.05 CONFIDENTIALITY.

A mediator, a Hearing Officer conducting a settlement conference, an arbitrator or a member of an arbitration panel shall preserve and maintain the confidentiality of all administrative dispute resolution proceedings in which that person participates, except when required by law to disclose the information.

Authority: *Tennessee Code Annotated, §§ 4-5-105, 65-2-108 and 65-2-102. ***Administrative History:*** Original rule filed June 30, 2000; effective September 13, 2000.*